

Background

During the April 8, 2014 Radiation Control Board meeting information was provided to Board members regarding preliminary draft rules that involve compliance with federal statutory provisions along with preliminary draft rule changes. The federal provision is as follows:

Atomic Energy Act §274(o), 42 USC §2021(o) (excerpt)

In the licensing and regulation of byproduct material, as defined in section 11e.(2) of this Act, or of any activity which results in the production of byproduct material as so defined under an agreement entered into pursuant to subsection b., a State shall require—

. . .

(3) procedures which—

(A) in the case of licenses, provide procedures under State law which include—

(i) an opportunity, after public notice, for written comments and a public hearing, with a transcript,

(ii) an opportunity for cross examination, and

(iii) a written determination which is based upon findings included in such determination and upon the evidence presented during the public comment period and which is subject to judicial review

In order to abide by the requirements, new rulemaking will be required to make clear to participants how those requirements are being met. The Radiation Control Board is seeking public comments on preliminary draft rule changes to Utah Administrative Code R313-17 *Administrative Procedures*; R313-24 *Uranium Mills and Source Material Mill Tailings Disposal Facility Requirements*; and R305-7-607 *Matters Governed by the Radiation Control Act, Title 19, Chapter 3, but not Including Section 19-3-109*, which are provided below:

**RULES TO IMPLEMENT FEDERAL STATUTE
REGARDING QUESTION AND ANSWER HEARINGS FOR
SPECIFIED BYPRODUCT LICENSE ACTIONS**

March 31, 2014

**R313-17-4. Special Procedures for Decisions Associated with Licenses for Uranium Mills
and Disposal of Byproduct Material.**

(1) Definitions. For purposes of this rule:

- (a) "Byproduct material" has the same meaning as defined in 42 U.S.C. § 2014(e) ;
and
- (b) "Question and answer hearing" means the informal hearing described in
paragraphs (3) through (5) held for the purpose of responding to questions from
the public.

(2) Scope. This rule R313-17-4 applies only to licensing and permitting activities that are:

- (a) described in R313-17-2(a)(i)(A) through (I); and
- (b) for uranium mills and disposal of byproduct materials.

(3) Opportunity for Question and Answer Hearing Prior to Director's Decision.

The division shall hold a question and answer hearing, as described in this section, for the
licensing activities within the scope of this rule prior to issuance of the license. The
division may combine the question and answer hearing with a licensing or permitting
hearing held for the purpose of taking public comment on a proposed licensing or
permitting action.

(4) Procedures Prior to Question and Answer Hearing.

- (a) The Division shall provide a notice of the question and answer hearing at least 30
days before the hearing. The notice shall also summarize the applicable
procedures, including the obligation to provide questions in advance of the
hearing.
- (b) Any person who proposes to ask questions during the question and answer
hearing shall submit the questions to the division. Questions must be received by
the division by the deadline specified in the public notice, which shall be no fewer
than 15 days after the notice of the question and answer hearing is posted. If a
question relies on information that is not included in the licensing or permitting
record, that information shall be submitted with the questions. The relevance of
and the relevant portions of any supporting materials shall be described with
reasonable specificity. Information submitted in accordance with this paragraph
will become part of the record.
- (c) If the Director determines that any of the questions submitted will not be
answered during the question and answer hearing, as provided in paragraph (5)(f),
the director shall notify the person who submitted the questions prior to the
hearing. Notification shall include a statement about the director's reasons for the
determination.

(5) Procedures for Question and Answer Hearing.

- (a) The question and answer hearing shall ordinarily be held in the Department of

Environmental Quality offices. Unless the question and answer hearing is held in a place near the proposed facility, the division shall provide an opportunity for the public to participate by telephone or other electronic means.

- (b) The question and answer hearing session will not ordinarily be scheduled for longer than three hours. The division may allocate time to those who have submitted questions after considering the number and nature of the questions submitted.
- (c) A hearing officer shall manage the question and answer hearing. Representatives of the licensee and division staff shall attend the hearing.
- (d) The question and answer hearing shall be recorded and transcribed. Alternatively, the division may elect to have a court reporter record and transcribe the hearing.
- (e) The Director shall determine whether the initial and follow-up question will be answered by the applicant, by division staff, or by both. Notwithstanding the Director's decision, the applicant may choose to respond to any question. After the response to a question, the person who submitted the question shall be allowed to follow up with additional questions based on the response provided.
- (f) Appropriate questions are those that seek specific factual information about the license or permit application, or about other documents created during the licensing or permitting process. The following kinds of questions do not require a response during a question and answer session:

 - (i) Questions that are not relevant to the licensing action;
 - (ii) Questions that are based on information that is not in the record;
 - (iii) Questions that are vague;
 - (iv) Questions that require speculation;
 - (v) Questions that seek legal conclusions;
 - (vi) Questions that have been previously answered;
 - (vii) Questions that are more appropriately characterized as comments; and
 - (viii) Questions that would not have to be answered during a trial-type hearing.
- (g) Either the agency or the applicant may elect to answer a question even if it is a question that does not require a response under paragraph (f). No waiver will result from answering a question that does not require a response.
- (h) Questions requesting information that is clear in the record may be answered by referring the questioner to the record.
- (i) In the event that a questioner or the applicant disagrees with the Director's determinations under paragraphs (4)(c), (5)(b), or (5)(e), it may request a determination by the hearing officer. If the hearing officer disagrees with the Director's determination, the division or, as appropriate, the applicant may then:

 - (i) comply with the hearing officer's determination during the question and answer hearing;
 - (ii) comply with the hearing officer's determination by responding to the question in writing no fewer than 10 days before the end of the comment period; or
 - (iii) notify the questioner or applicant that it contests the determination, and

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provide information to the questioner about the procedures available to it under paragraph (5)(j).

- (j) If a decision of the hearing officer is contested as described in paragraph (5)(i)(iii), the person who asked the question may challenge that failure to comply with the hearing officer's decision on appeal. If the hearing officer's determination is upheld on appeal, the record on appeal shall be supplemented as described in paragraph (6) and R305-7-607.

(6) Formal Questioning During Appeal.

If the procedures in paragraphs (2) through (5) are not used before the director's final determination, an opportunity for questioning shall be provided on appeal as described in R305-7-607.

(Note: This is in R305 because only the Department has authority to make rules governing what is in a record under 19-1-301.5(8)(c)(vi))

R305-7-607. Matters Governed by the Radiation Control Act, Title 19, Chapter 3, but not Including Section 19-3-109.

- (1) Paragraph (2) of this[This] subsection R305-7-607 applies to all matters governed by the Radiation Control Act, Title 19, Chapter 3, but not including Section 19-3-109.

- (2) Definitions.

"Director" means the Director of the Division of Radiation Control.

- (3) This paragraph (3) applies to proceedings to which R313-17-4(6) applies.**

- (a) A hearing shall be conducted by the ALJ for the limited purposes of:**

(i) allowing the petitioner to ask questions; and

(ii) allowing follow-up questions of the witnesses or other witnesses, including those representing the petitioner, by any party.

- (b) Questioning under this paragraph shall be consistent with the standards specified R313-17-4(f) and (h).**

- (c) The ALJ shall determine whether the petitioner's questions shall be answered by the division staff, by the applicant, or by both.**

- (d) The procedures in R305-7, Part 3 shall govern the hearing as appropriate for the limited scope of the hearing.**

- (e) The transcript of the hearing will be part of the record on appeal, as authorized in 19-1-301.5(8)(c)(vi).**

(Note: This is added to provide a cross-reference within the Uranium Mill and Mill Tailings rules.)

R313-24-1. Purpose and Authority.

- (1) The purpose of this rule is to prescribe requirements for possession and use of source material in milling operations such as conventional milling, in-situ leaching, or heap-leaching. The rule includes requirements for the possession of byproduct material, as defined in Section R313-12-3 (see "byproduct material" definition (b)), from source material milling operations, as well as, possession and maintenance of a facility in standby mode. In addition, requirements are prescribed for the receipt of byproduct material from other persons for possession and disposal. The rule also prescribes requirements for receipt of byproduct material from other persons for possession and disposal incidental to the byproduct material generated by the licensee's source material milling operations.
- (2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(4) and 19-3-104(8).
- (3) The requirements of Rule R313-24 are in addition to, and not substitution for, the other applicable requirements of Title R313. In particular, the provisions of Rules R313-12, R313-15, R313-18, R313-19, R313-21, R313-22, and R313-70 apply to applicants and licensees subject to Rule R313-24.
- (4) See R313-17-4 for special procedures for decisions associated with licenses for activity which results in the production of byproduct material.